

Enriching Lives



# ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

11 December 17, 2013



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Executive Director

December 03, 2013

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**RECOMMENDATION TO DEACCESSION AND DONATE THE FORMER  
MANHATTAN BEACH LIBRARY ARTWORK TO THE CITY OF  
MANHATTAN BEACH  
(ALL DISTRICTS) (4 VOTES)**

**SUBJECT**

Request approval to deaccession a County-owned artwork from the former County library in the City of Manhattan Beach and to donate the deaccessioned artwork to the City of Manhattan Beach for public display within the city.

**IT IS RECOMMENDED THAT THE BOARD:**

Deaccession the artwork by Lee Whitten, created for the Manhattan Beach Library in 1975, from the County Civic Art Collection.

Donate the artwork by Lee Whitten to the City of Manhattan Beach, and authorize the Executive Director of the Arts Commission to prepare and execute an Artwork Transfer Agreement with the City of Manhattan Beach, subject to approval as to form by County Counsel, to effectuate the donation of the artwork.

## **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

### County Civic Artwork Deaccession/Donation

On August 9, 2011, the County approved and established the Manhattan Beach Library Project, Capital Project No. 69571, for the purpose of demolishing the former County Library located at 1320 Highland Avenue in the City of Manhattan Beach, and the construction of a new County library located within the jurisdictional boundaries of the City. Demolition of the former library required removal of a tile wall mural at the entrance of the library. The artwork was a 14'-6" wide x 12' tall site-specific tile mural, previously affixed to the building exterior, by California artist Lee Whitten, commissioned in 1975 by the County for that building.

In 2004, the Board approved the Civic Art Policy for the County, which authorized the Arts Commission to establish procedures to implement the Civic Art Policy. Under existing Civic Arts Procedures, adopted by the Arts Commission in 2009, the County retains the right to deaccession any civic art on County property if the site for the artwork will be destroyed or altered in a significant way.

The Arts Commission evaluated options to place the tile mural into the new library building. Through public input and close coordination with the City of Manhattan Beach, the County Public Library and the Arts Commission determined the tile mural would not be suitable for the new building.

However, because the artwork was designed for the City of Manhattan Beach and has been on public view in Manhattan Beach for 38 years, there was a strong desire for it to remain there. Other potential County owned sites were studied, but there are no other County owned buildings in Manhattan Beach that could accommodate the tile mural without significantly altering its size, design and artistic intent.

Deaccession and removal of an artwork from the County's civic art collection requires Board approval. As dictated in the approved Civic Art Procedures, staff has consulted with County Counsel and received written approval from artist Lee Whitten on June 6, 2013 to deaccession the artwork from the County's collection. Also in accordance with Civic Art Procedures, the artist was offered the opportunity to purchase the art at its current appraised value and he declined to do so. Procedures dictate several additional options for removal of an artwork from the County Collection: offering it for sale, destroying it, or donating it to a municipality, museum or nonprofit organization.

In this case, donating the tile mural to the City of Manhattan Beach, which has already provisionally selected a site for the installation and display of the artwork to the public pending Board approval, serves the goals and objectives of the County's Civic Art Policy. The City of Manhattan Beach's established Art in Public Places program can receive and maintain a public artwork. Additionally, the city shares the County's goal of promoting artistic and cultural experiences for its citizens.

Upon your Board's approval, the artwork will be deaccessioned from the County civic art collection and will be donated to, and become the property of, the City of Manhattan Beach through an Artwork Transfer Agreement (Attachment A).

## **FISCAL IMPACT/FINANCING**

The County cost to prepare the mural for deaccession and donation is \$30,000. County Public Library has budgeted this amount for the removal, restoration and reinstallation of the tile mural. No additional funds are required.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

On August 9, 2011 your Board approved the Manhattan Beach Library Project, Capital Project No. 69571.

On August 20, 2013 the ceramic tile mural by Lee Whitten was removed from the former library during the demolition of the building.

On October 7, 2013 the Arts Commission approved the deaccession of the ceramic tile mural by Lee Whitten from the Civic Art Collection and donation to the City of Manhattan Beach and recommends your Board approves the deaccession and donation of the artwork.

On November 5, 2013 the City of Manhattan Beach approved receipt of the donation of the ceramic tile mural by Lee Whitten from the former library and approved the new location on City property, pending approval from your Board.

On November 5, 2013 the City of Manhattan Beach approved an Artwork Transfer Agreement between the County of Los Angeles and the City of Manhattan Beach to transfer ownership of the former Library Artwork from the County to the City. The Agreement will be executed pending approval from your Board.

### **ENVIRONMENTAL DOCUMENTATION**

The deaccessioning and donation of the existing mural is exempt from and/or not subject to the California Environmental Quality Act (CEQA) pursuant to section 15061(b)(3) of the CEQA Guidelines, as it can be seen with certainty that there is no possibility that such activities may have a significant effect on the environment.

### **CONTRACTING PROCESS**

On November 5, 2013 the City of Manhattan Beach City Council approved the Transfer of Ownership Agreement between the County of Los Angeles and the City to transfer ownership of the ceramic tile mural by Lee Whitten from the former Library building. This contract has been negotiated and requires your Board approval to be finalized.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The deaccession and transfer of ownership relieves the County of future maintenance costs and liability of the artwork. Donating it the City of Manhattan Beach for public display ensures the artwork will remain accessible in the vicinity of the new Library, retaining its historic connection to the County.

The Honorable Board of Supervisors

12/3/2013

Page 4

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Laura Zucker", followed by a long horizontal line extending to the right.

LAURA ZUCKER

Executive Director

LZ:MB:MCH

Enclosures

c: Executive Office, Board of Supervisors  
County Counsel  
Public Library  
Public Works

## ARTWORK TRANSFER AGREEMENT

This Artwork Transfer Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the County of Los Angeles ("County"), a body corporate and politic and a political subdivision of the State of California, by and through the Los Angeles County Arts Commission ("Commission"), on the one hand, and the City of Manhattan Beach ("City"), a body corporate and politic, on the other hand. This Agreement is made with reference to the following facts:

### RECITALS

A. The County is the owner of an original artwork titled, *Untitled (For Jack)* by artist Lee Whitten ("Artwork"). The Artwork consists of a ceramic tile mural, 14'-6" wide by 12'-0" tall. The Artwork was commissioned by the County for installation in the former Manhattan Beach Library building, and was affixed to the exterior of that building from 1975 until August 2013. In August 2013, the former Manhattan Beach Library building was demolished as part of a project to build a new County library facility within the City. Prior to demolition of the former library building, the County engaged a professional artwork conservator which removed the Artwork, with the exception of a portion of the Artwork which had been affixed to the interior of the former library building, and secured it in storage; and

B. The County and City desire that the Artwork, which was commissioned for and displayed in the City for nearly 40 years, continue to be displayed in the City on City-owned property for the benefit of the public; and

C. The City agrees to accept the Artwork for the purpose of incorporating it into the City's Art in Public Places program.

NOW, THEREFORE, in consideration of the promises, conditions, and mutual covenants set forth herein, the parties hereto do agree as follows:

### AGREEMENT

1. Installation of the Artwork on City Property. The County will, at its sole cost, contract with a professional conservator to install the Artwork on City-owned property, at a location to be selected by the City. Installation of the Artwork will be performed in a workmanlike manner and will be free of defects in workmanship and materials. The County will also, at its sole cost, install a didactic plaque near the installed Artwork. The City will assist the County as needed to achieve the installation of the Artwork, and will at its sole cost obtain any permits or other approvals, including any environmental approvals required by State or local law, necessary to authorize or allow the installation of the Artwork. The County will consult with the City prior to installation concerning any specifications, safety procedures, and local laws and regulations related to the installation of the Artwork, and shall conduct the installation in conformance with any applicable laws and regulations.

2. Transfer of Ownership. Any and all right, title and interest in and to the Artwork will transfer from the County to the City upon the City's formal acceptance of the Artwork pursuant to Paragraph 3, below.

3. Acceptance. The County shall notify the City in writing when the Artwork installation pursuant to Paragraph 1, above, is complete. The City shall provide the County with a formal acceptance within 10 days of receipt of a notice of complete installation, except that if the City identifies one or more substantial defects in workmanship in the installation of the Artwork, the City shall provide the County within 10 days of receipt of the notice of complete installation with a written notice of required corrections which specifies any defects. If the City issues a notice of required corrections, the County will work in good faith to correct any substantial defects, and will provide the City with a new notice of complete installation upon correction thereof. If the County and the City disagree as to whether a claimed defect is a substantial defect in workmanship in the installation of the Artwork, the parties will meet and confer in good faith to reach a satisfactory solution, taking into account the purposes and goals of this Agreement. The condition of the Artwork, which the City is agreeing to accept in a restored condition pursuant to Paragraph 4, below, is not a defect in workmanship in the installation of the Artwork for the purposes of this paragraph.

4. Condition of Artwork. The City agrees that it the Artwork will be installed in a restored condition, and that the Artwork may not be identical to the Artwork as it existed when installed in the former Manhattan Beach Library, including but not limited to differences in its dimensions, tile orientation, condition, and/or character. Except for the express representations and warranties set forth herein, the City agrees that the County has not made, does not make, and specifically negates and disclaims any representations or warranties of any kind or character whatsoever, whether expressed or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Artwork.

5. Use. Commencing upon the City's formal acceptance of the Artwork pursuant to Paragraph 3, above, the City shall, at its sole cost, maintain the Artwork in a public place for the benefit of the public, and shall incorporate the Artwork into the City's Art in Public Places program. The City agrees not to remove the Artwork from its location as installed pursuant to Paragraph 1, above, except where required for reasons of public safety, where the Artwork is threatened by demolition or other action which may damage or destroy the Artwork, or after 25 years from the date of installation. In the event the City removes the Artwork from its location as installed pursuant to Paragraph 1, above, the City agrees to make best efforts to relocate the Artwork for continued public display in Los Angeles County for the benefit of the public, or to donate the Artwork for public display in Los Angeles County. In no event shall the City sell or transfer the Artwork, or authorize any person or entity to sell or transfer the Artwork, for any amount, whether monetary or in kind.

6. Additional Documentation. Upon the City's formal acceptance of the Artwork pursuant to Paragraph 3, above, the County will provide the City with a conservation record of the Artwork, maintenance guidelines, and biographic and contact information for the artist.

7. Defects in Workmanship Within One Year of Installation. The City acknowledges that the County's agreement with a professional conservator for the installation of the Artwork pursuant to Paragraph 1, above, may provide that the conservator will remedy, at no cost, any defects in workmanship evident or appearing within one year of installation of the Artwork. In the event the City discovers any such defect in workmanship within one year of the date of the installation of the Artwork, the City may contact the County to discuss whether such defect is within the scope of the conservator's contract with the County and, if so, the County will work in good faith with the conservator to ensure that such defects are remedied by the conservator. In consideration of the County's donation of the Artwork and the installation by the County of the Artwork on City-owned property, the City hereby covenants not to sue, and waives and agrees to hold harmless the County, for any and all claims related to or arising from defects in workmanship in the installation of the Artwork.

8. Indemnification.

a. The County shall indemnify, defend and hold harmless the City, its elected and appointed officers, employees, and agents ("City Indemnitees") from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the County's acts and/or omissions arising from and/or relating to this Agreement, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising under the Visual Artists Rights Act (VARA) (17 U.S.C. § 106A, et seq.) or the California Art Preservation Act (CAPA) (Cal. Civ. Code § 987, et seq.), except for such loss or damage arising from the sole negligence or willful misconduct of the City Indemnitees.

b. The City shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents ("County Indemnitees") from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the City's acts and/or omissions arising from and/or relating to this Agreement, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising under the Visual Artists Rights Act (VARA) (17 U.S.C. § 106A, et seq.) or the California Art Preservation Act (CAPA) (Cal. Civ. Code § 987, et seq.), except for such loss or damage arising from the sole negligence or willful misconduct of the County Indemnitees.

c. In contemplation of the provisions of section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement, as defined by section 895 of the

California Government Code, the parties hereto, as between themselves, pursuant to the authorization contained in sections 895.4 and 895.6 of the California Government Code, will each assume the full liability imposed upon it, or any of its officers, agents, or employees, by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of section 895.2. To achieve the above-stated purpose, each party indemnifies and holds harmless the other party for any liability imposed solely by virtue of section 895.2. The provision of section 2778 of the California Civil Code is made a part hereto as if fully set forth herein. Each party certifies that it has adequate self-insured retention of funds to meet any obligation arising under or related to this Agreement.

9. Default Regarding Use of County Lobbyists. The City and each County lobbyist or County lobbying firm, as defined in section 2.160.010 of the Los Angeles County Code ("County Code"), retained by the City shall comply with the County Lobbyist Ordinance, Chapter 2.160 of the County Code. Failure on the part of the City or any County lobbyist or County lobbying firm retained by the City to comply with the County Lobbyist Ordinance shall constitute a material breach of this Agreement upon which the County may immediately terminate or suspend this Agreement.

10. Notices. Any written notices required by this Agreement shall be made by personal delivery, registered or certified mail, postage prepaid, to the address indicated below:

City: David Carmany  
City Manager  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

County: Laura Zucker  
Executive Director  
Los Angeles County Arts Commission  
1055 Wilshire Blvd, Suite 800  
Los Angeles, CA 90017

11. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but of which together shall constitute one and the same instrument.

12. Authorization, Approvals, Binding Nature. This Agreement has no force and effect and is not binding on either party unless and until it is approved by the Los Angeles County Board of Supervisors and the City of Manhattan Beach City Council, and the County and the City have fully executed this Agreement.

13. Severability. In the event any portion of this Agreement is declared invalid, illegal, or unenforceable by a court of competent jurisdiction, such portion will be



severed from the Agreement, and the remaining parts hereof will remain in full force and effect as fully as though such invalid, illegal, unenforceable portion had never been part of the Agreement, provided the remaining Agreement can reasonably and equitably be enforced.

14. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

15. Choice of Law and Venue. This Agreement shall be construed in accordance with the internal laws of the State of California. Venue for any action related to or arising out of this Agreement shall be in Los Angeles County Superior Court.

16. Waiver. The failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of such provision or any other provision, or any subsequent breach thereof.

17. Captions. The captions appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such paragraphs of this Agreement nor in any way affect this Agreement.

18. Agreement as Product of Negotiation and Assistance of Counsel. The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this Agreement. Each party hereto either had the assistance of counsel or had counsel available to it in the negotiation for, and the execution of, this Agreement, and all related documents.

19. Required Action of the Parties. The County and the City agree to execute all such instruments and documents and to take action as may reasonably be required in order to achieve and consummate the terms, provisions, and purposes of this Agreement.

20. Survival. The covenants, agreements, representations and warranties made herein are intended to survive the consummation of the transfer of the Artwork.

21. Expiration. This Agreement will expire at 5:00 p.m. on October 1, 2038, except that the provisions of Paragraphs 5 and 8, above, shall survive such expiration and continue in perpetuity.

22. Amendments. The Agreement may only be amended in a writing approved by the Los Angeles County Board of Supervisors and the City of Manhattan Beach City Council, and fully executed by the parties hereto.

23. Integration/Merger. This Agreement contains the entire agreement of the parties with the respect to the transaction contemplated hereby and supersedes any prior agreement, oral or written, between the City and County, about the subject matter hereof. No contemporaneous or subsequent agreement, amendment, representation or promise made by either party, shall be of any effect unless it is in writing and executed by the parties hereto.

24. Interpretation. Unless the context of this Agreement clearly requires otherwise: (i) the plural and singular numbers shall be deemed to include the other; (ii) the masculine, feminine and neuter genders shall be deemed to include the others; (iii) "or" is not exclusive; and (iv) "includes" and "including" are not limiting.

**IN WITNESS THEREOF**, the County and the City have executed this Agreement as of the day, month, and year first above written.

**COUNTY OF LOS ANGELES**

Date: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
LAURA ZUCKER, Executive Director  
Los Angeles County Arts Commission

**APPROVED AS TO FORM:**

John F. Krattli  
County Counsel

By \_\_\_\_\_  
Joseph M. Nicchitta  
Deputy County Counsel

**CITY OF MANHATTAN BEACH**

Date: \_\_\_\_\_, 2013

By: \_\_\_\_\_  
DAVID CARMANY, City Manager  
City of Manhattan Beach

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Quinn Barrow  
City Attorney